

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-185376

DATE: JUL 23 1976

MATTER OF: Henry J. Kessler - Subsistence expenses
while occupying temporary quarters

DIGEST:

Employee's family occupied temporary quarters for eight days in Laurel, Maryland, where their new residence was located. For the following two weeks they moved into an apartment in Rehobeth Beach, Delaware, approximately eighty miles from Laurel. Employee is entitled to be reimbursed for his family's subsistence expenses during this two week period because there is no evidence in the record to indicate that their occupancy of temporary quarters was not directly related to the employee's transfer of duty station.

This action is in response to a request by Mr. W. Smallets, an authorized certifying officer of the National Security Agency (NSA) for a decision regarding the propriety of reimbursing Henry J. Kessler, an NSA employee, for subsistence expenses while occupying temporary quarters incident to a permanent change of duty station. Originally NSA denied \$986.38 of Mr. Kessler's total claim for temporary quarters subsistence expenses, and it is that amount which is now being questioned.

On transferring from Cheltenham, England, to Fort Meade, Maryland, Mr. Kessler and his family moved into the Holiday Inn in Laurel, Maryland, on July 25, 1975. NSA has reimbursed the employee temporary quarters subsistence expenses for the eight days they resided there. On August 2, 1975, Mr. Kessler's wife and three children moved into an apartment in Rehobeth Beach, Delaware, approximately eighty miles from Laurel. During their two week stay in Rehobeth, Mr. Kessler lived with an elder son whose residence was in Laurel. When the renovations to their home were finally completed on August 15, 1975, Mr. Kessler and his family moved into their new residence, also in Laurel. NSA denied reimbursement to Mr. Kessler for his family's temporary quarters subsistence expenses incurred between August 2 and August 15, and Mr. Kessler has appealed this determination.

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NSA's denial was based on two findings, which it views as precluding Mr. Kessler's receipt of a temporary quarters subsistence expenses allowance under chapter 2, part 5 of the Federal Travel Regulations (FPMR-101-7) (May 1973). First, the Agency considered the fact that Mr. Kessler's family moved without explanation or apparent necessity from the Holiday Inn in Laurel to the apartment in Rehobeth Beach. The Federal Travel Regulations, para. 2-5.2f (May 1973), specifically states that "The employee may occupy temporary quarters at one location while members of the immediate family occupy quarters at another location." See B-164746, August 20, 1974; B-167662, September 18, 1969; B-165139, October 8, 1968. Thus, the fact that Mr. Kessler's family occupied temporary quarters in Rehobeth while he remained in Laurel by itself would not bar the employee's claim.

In addition, FTR, para. 2-5.4a (May 1973) provides in part that "Reimbursement shall be only for actual subsistence expenses incurred provided these are incident to occupancy of temporary quarters and are reasonable as to amount." See also B-169850, September 17, 1970. In questioning the reasonableness of the family's move to Rehobeth, NSA emphasized that the cost of lodging there was more expensive than at the Holiday Inn in Laurel. However, because meals were less expensive in Rehobeth, where cooking facilities were available, we note that it was actually less expensive for Mr. Kessler's family to stay in Rehobeth. Moreover, even if the cost had been greater in Rehobeth, NSA could not completely deny Mr. Kessler's claim. Under such circumstances the Federal Travel Regulations authorize the agency to reimburse the employee for expenses incurred, limited to the maximum constructive temporary quarters subsistence expenses computed in accordance with FTR, para. 2-5.4c (May 1973).

In its second finding, NSA indicated that Mr. Kessler intended that his family would spend the two week period from August 2 through 15 at Rehobeth, regardless of whether or not his new residence was completed on August 2, and in effect concluded that their occupancy of quarters in Rehobeth was not incident to transfer. Federal Travel Regulations (FTR) (FPMR 101-7) para. 2-5.1 (May 1973) states in pertinent part:

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"Heads of agencies shall prescribe procedures for administering these provisions reasonably and equitably so that the necessity for allowing subsistence expenses and the amount of time an employee and members of his immediate family use temporary quarters is justified in connection with the employee's transfer to a new official station. (Emphasis added.)

Under this provision and para. 2-5.4a, quoted above, we have consistently held that the occupancy of temporary quarters must be directly related to the employee's transfer of duty station. See B-179556, May 14, 1974. Thus, if Mr. Kessler's family's stay in Rehobeth was solely for vacation purposes, and unrelated to their need for temporary quarters, the employee would not be entitled to a temporary quarters subsistence expenses allowance for that period. In this we agree with the Agency. See B-170336, October 29, 1970. However, it is clear from the record presented in Mr. Kessler's case, that his family's stay in Rehobeth was directly related to his transfer and to their need to occupy temporary quarters. On February 5, 1975, the administrative office in London informed Mr. Kessler that his household goods would be shipped on July 4, and that he could expect their arrival to be approximately 45 days later, on August 18. Thus, Mr. Kessler knew of his transfer well before he officially received his PCS orders. NSA stressed the fact that Mr. Kessler had made arrangements for the apartment in Rehobeth some sixty days before the return PCS orders were issued, and some four months prior to the actual date of occupancy. However, because Mr. Kessler had been provided with information concerning his transfer early in February, we cannot conclude that Mr. Kessler was merely planning a "vacation" for his family or that his lease of the apartment in Rehobeth was unrelated to his transfer. See B-167976, January 3, 1970. Mr. Kessler expected his household goods to arrive on August 18 and with this in mind made arrangements for his family to occupy temporary quarters. We have held that when an employee's family occupies temporary quarters because their household goods have not yet arrived, the employee is entitled to be reimbursed for their expenses. See B-170594, September 16, 1970.

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With regard to the necessity for occupancy of temporary quarters we have held that an employee may be reimbursed for subsistence expenses while on annual leave, provided that such leave does not unnecessarily extend the period of temporary occupancy. See B-184137, December 29, 1975; B-165139, supra. Here, Mr. Kessler and his family moved into their new residence as soon as it became habitable. For this reason it does not appear that their stay at Rehobeth unnecessarily extended the period of their occupancy of temporary quarters.

From the record presented it need not be concluded that Mr. Kessler's family moved into the apartment in Rehobeth primarily for "personal reasons." See B-175594, supra, and cases cited therein. Instead, the record indicates that they occupied these temporary quarters incident to the employee's transfer. Accordingly, Mr. Kessler may be reimbursed for temporary quarters subsistence expenses incurred by his family during the period between August 2 and August 15, 1975, insofar as otherwise proper.

R. F. Kellar
Deputy Comptroller General
of the United States